

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**June 10, 2014 at 9:32 A.M.**

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| 1. <a href="#">13-29800</a> -B-13    JOSE ARANDA AND FAVIOLA<br>JPJ-1                    VALENCIA-ARANDA | OBJECTION TO CLAIM OF SANTANDER<br>CONSUMER USA, CLAIM NUMBER 17<br>4-8-14 [ <a href="#">122</a> ] |
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**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 17, filed on November 13, 2013, by Santander Consumer USA ("Santander") in the amount of \$13,571.43 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim is a duplicate of claim number 1 on the court's claims register, also filed by Santander in the secured amount of \$13,571.43 on August 1, 2013. The claim filed by Santander on August 1, 2013 and the Claim assert the same amount, secured status and account number.

The court will issue a minute order.

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| 2. <a href="#">11-26307</a> -B-13    VICTOR/PATRICIA GUZMAN<br>WW-1 | CONTINUED MOTION TO COMPROMISE<br>CONTROVERSY/APPROVE SETTLEMENT<br>AGREEMENT WITH ONEWEST BANK,<br>FSB, ET AL.<br>5-6-14 [ <a href="#">56</a> ] |
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**Tentative Ruling:** This matter continued from May 27, 2014, for supplemental briefing. The debtors timely filed supplemental briefing on June 3, 2014. The court now issues the following tentative ruling.

The motion is denied without prejudice.

This motion seeking approval of a settlement (the "Settlement") between the debtors and OneWest Bank, FSB is denied because it does not give parties in interest to the motion sufficient notice of a material term of the settlement, i.e. the amount of a payment from OneWest to the debtors, referred to in the Settlement as the "Settlement Sum." The failure of the motion to disclose this material term means that parties in interest do not have information necessary to allow them to evaluate whether the Settlement is fair and equitable. The debtors have not shown that the

Settlement Sum is information that is protected by statute or rule, such as Fed. R. Bankr. P. 9018, or 11 U.S.C. §§ 107(b) or 112. In their supplemental brief the debtors concede that the Settlement Sum is not information of the type which is protected. They have also cited no legal authority - and the court is aware of none - which stands for the proposition that parties to a compromise may redact and conceal from parties in interest to a motion for approval of compromise whatever portions of an agreement that they wish because the terms of the agreement provide for it.

In their supplemental briefing the debtors argue that this motion for approval of the Settlement is not even necessary because Fed. R. Bankr. P. 9019 provides that only a trustee is required to file a motion for approval of a compromise. The court does not agree with this narrow view of the rule.

The debtors commenced this case on March 14, 2011. Their sworn Schedule B filed with their petition listed, inter alia, the claims which are the subject of the Settlement as property of the estate, with a value of \$5,000.00. The debtors claimed a \$5,000.00 exemption in the claims pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). The debtors confirmed a chapter 13 plan in this case on May 26, 2011. The confirmed plan provides for a dividend of 0% to general unsecured creditors. The confirmed plan provides, via the order confirming the plan, that property of the estate scheduled under 11 U.S.C. § 521 would revert in the debtors on confirmation. The plan also provides in Section 6.02 that the debtors are "prohibited from transferring, encumbering, selling, or otherwise disposing of any personal or real property with a value of \$1,000.00 or more other than in the regular course of the Debtor's financial or business affairs without first obtaining court authorization."

In the Ninth Circuit, a compromise of a claim that is property of the estate is "the equivalent of a sale of the intangible property represented by the claim, which transaction simultaneously implicates the "sale" provisions under [11 U.S.C. § 363 as implemented by [Fed. R. Bankr. P. 6004] and the "compromise" procedure of [Fed. R. Bankr. P. 9019(a)]." In re Mickey Thompson Enter. Group, Inc., 292 B.R. 415, 421 (9th Cir. 2003). 11 U.S.C. § 1303 provides that a debtor under chapter 13 shall have, exclusive of the trustee, the rights and powers of a trustee under, inter alia, 11 U.S.C. § 363(b), which governs the use, sale or lease of property of the estate other than in the ordinary course of business. The debtor under chapter 13, as holder of some of the powers of a trustee, is also subject to the rules governing those powers. Judge Lundin agrees:

Chapter 13 debtors occasionally are personally involved enough to bring suit and to want to control litigation during the Chapter 13 case. Disputes involving consumer fraud, lending and collection practices and personal injury to the debtor have produced reported decisions in which Chapter 13 debtors have asserted control over litigation after filing the petition. One court held that a Chapter 13 debtor's right to sue and be sued, though exercised concurrently with the trustee, is exclusively the debtor's with respect to who "owns" a civil rights action in which the debtor is the plaintiff; thus, the debtor controls whether and on what terms to settle the lawsuit. This is a sensible outcome. The Chapter 13 debtor has the exclusive right to "use" the lawsuit under §§ 1303 and 363, and the debtor should control all aspects of the litigation, including

settlement. The debtor would certainly have to notice any settlement to all creditors under Bankruptcy Rule 9019. The (nonexempt) proceeds of a lawsuit by the debtor will be property of the estate that must be valued for purposes of the best-interests-of-creditors test. The proceeds may be characterized as income for purposes of the disposable income test in § 1325(b).

Keith M. Lundin & William H. Brown, Chapter 13 Bankruptcy, 4th Edition, § 54.1, at ¶ 9, Sec. Rev. May 24, 2004, [www.Ch13online.com](http://www.Ch13online.com) (footnotes omitted).

The terms of the debtors' confirmed plan, the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure all require that the debtors file a motion for approval of the Settlement, and that the Settlement disclose all material terms not otherwise protected by statute or rule. The case cited by the debtors, In re Thornton, 2005 Bankr. LEXIS 3145 (Bankr. S.D. Ga. 2005) is not binding on this court and the court declines to follow it. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

3.	<a href="#">11-38213</a> -B-13    LOU SAELOR AND MEY PGM-7                SAEPHAN	MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A. 5-6-14 [ <a href="#">112</a> ]
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**Tentative Ruling:** The motion is denied without prejudice.

By this motion the debtors seek to avoid a judicial lien of creditor Sima Faed ("Faed") to the extent it impairs their claim of exemption in real property located at 300 Aldeburgh Circle, Sacramento, California (the "Property"). To avoid a judicial lien pursuant to 11 U.S.C. § 522(f), the debtor must show the following:

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994) (table).

In this case, the debtors have failed to show that there is a judicial lien that encumbers the Property. Under California law, a judgment lien on real property is created by recording an abstract of judgment with the county recorder. Cal. Civ. Proc. Code 697.310(a). The evidence filed by the debtors in support of the motion (Dkt. 116), consisting of the claim filed by Faed on the court's claims register, is not accompanied by an abstract of judgment recorded with the county recorder for the county in which the Property is located, but is instead accompanied by a copy of a Notice of Judgment Lien recorded with the California Secretary of State.

While a notice of judgment lien filed with the Secretary of State can create a judicial lien with respect to personal property, the motion does not seek avoidance of a lien on personal property. The court notes that it previously denied a prior motion by the debtors to avoid Faed's lien for the exact same reason stated in this ruling (See Dkt. 103).

The court will issue a minute order.

4. [12-24613](#)-B-13 JOSHUA LAGREE  
JPJ-2

OBJECTION TO CLAIM OF HSBC BANK  
USA, CLAIM NUMBER 6  
4-8-14 [[43](#)]

**Tentative Ruling:** The opposition filed by HSBC Bank USA, N.A. ("HSBC") is overruled. The trustee's objection is sustained, and claim No. 6, filed on January 23, 2014, by HSBC in the amount of \$153,120.88 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was July 18, 2012, and to file a government claim was September 4, 2012. The Claim was filed on January 23, 2014.

HSBC's opposition is not persuasive. In the Ninth Circuit the filing of a claim after the deadline established by Fed. R. Bankr. P. 3002(c) is allowed only in the circumstances described in Fed. R. Bankr. P. 3002(c)(1)-(6). Fed. R. Bankr. P. 9006(b)(3) specifically states that "the court may enlarge the time for taking action under Rules...3002(c)...only to the extent and under the conditions stated in those rules." See In re Coastal Alaska Airlines, Inc., 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990) ("Rule 3002(c) identifies six circumstances where a late filing is allowed."); In re Edelman, 237 B.R. 146, 152 (9<sup>th</sup> Cir. BAP 1999) (Bankruptcy Rule 3002(c) provides only five exceptions to the ninety day filing period prescribed for the filing of claims). Coastal Alaska's reference to six circumstances under Bankruptcy Rule 3002(c) and Edelman's reference to five circumstances is explained by the 1996 amendments to the Bankruptcy Code, which abrogated allowance of late-filed claims against surplus estate assets in chapter 7 cases. Bankruptcy Rule 3002 therefore "complements the process of allowing claims by setting a bar date by which a claim must be filed in order to be allowed under 11 U.S.C. § 502." In re Osborne, 76 F.3d 306, 309-310 (9<sup>th</sup> Cir. 1996). HSBC's opposition does not set forth any of the exceptions contained in Fed. R. Bankr. P. 3002(c)(1)-(6).

The court will issue a minute order.

5. [13-29814](#)-B-13 SUSAN LAWING  
PGM-1

MOTION TO MODIFY PLAN  
4-24-14 [[43](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained in part. The motion to confirm the modified plan filed April 24, 2014, is denied.

The chapter 13 trustee's objection that the plan proposes to impermissibly modify a claim secured by the debtor's principal residence is overruled. According to the additional provisions of the plan, the debtor proposes to modify the rights of the holder of the first deed of trust on real property located at 15530 Paskenta Road, Flournoy, California (the "Flournoy Property"). The Flournoy Property is not the debtor's principal residence. Debtor's Schedule A (Dkt. 10 at 11) indicates that the debtor's principal residence is located at 1540 Vilas Road, Cohasset, California.

The chapter 13 trustee's remaining objections are sustained for the reasons set forth therein.

In addition to the trustee's objections, the motion is also denied because the debtor has not sustained her burden under 11 U.S.C. § 1325(a)(6) of showing that she will be able to make all payments required by the plan. The debtor's supporting declaration states that she has had difficulty making the plan payments under the terms of the confirmed plan because she has had difficulty accessing the Flournoy Property. She states that her income comes from rentals and an olive oil business on the Flournoy Property and that she is "working on a settlement with the tenants and hope to have an agreement within this next month." (Dkt. 45 at 1). However, the debtor's sworn schedules do not disclose any leases between the debtor and tenants, nor do they disclose income derived from the rental of real property. Nor does the motion or the supporting declaration describe the nature of her access problem to the Flournoy Property. Considering the foregoing, the debtor's assertion that she is "working on" a settlement with previously undisclosed "tenants" does not support a finding that the debtor will be able to make all payments required by the plan.

The court will issue a minute order.

6. [12-20015](#)-B-13 ROBERT/VERONICA WARDLOW MOTION TO MODIFY PLAN  
MET-4 4-23-14 [[65](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the modified plan filed June 2, 2014, is confirmed.

The court will issue a minute order.

7. [12-41021](#)-B-13 ARLISA PARISH MOTION TO MODIFY PLAN  
WW-7 4-25-14 [[105](#)]

**Tentative Ruling:** The Ex Parte Application to Substitute First Modified Plan (the "Application") filed on June 3, 2014 (Dkt. 117) is denied. The motion is continued to June 24, 2014 at 9:32 a.m. On or before June 17,

2014 the debtor shall file a "Corrected First Modified Chapter 13 Plan," that is identical to Exhibit A to the Application but is not filed as an exhibit to another document (so that it will appear on the case docket as an "Amended/Modified Plan" and not as "Exhibit(s)").

The court is aware of no authority for an ex parte application to "substitute" a later filed document in place of a document filed with a motion, and no such authority is cited in the Application. However, in this instance, the omission of required signatures on the modified plan filed April 25, 2014 (Dkt. 107) is the sole defect which the debtor seeks to address through the Application. The omission of required signatures is addressed in F.R.Bankr.P. 9011(a). Rule 9011(a) states in part that "An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Rule 9011(a) is silent about how correction should be accomplished. However, the Rules Advisory Committee, commenting on F.R.Civ.P. 11(a), has stated that "correction can be made...by submitting a duplicate that contains the signature." Becker v. Montgomery, 532 U.S. 757, 764, 121 S.Ct. 1801 (2001), citing Advisory Committee's Notes on Fed. Rule Civ. Proc. 11, 28 U.S.C.App., p. 666. The submission of a duplicate that contains the signatures is exactly what the debtor attempted to do here by filing a duplicate with the missing signatures as Exhibit A to the Application. The only problem is the manner in which the duplicate was submitted. Accordingly, the court continues this matter to allow the debtor to file the duplicate as a separate document. Such filing will relieve the court and parties in interest of the burden of searching through all "Exhibit(s)" docket entries looking for modified plans.

The court will issue a minute order.

8. [13-27426](#)-B-13 LOYD/GLORIA KOSKI  
JPJ-2

OBJECTION TO CLAIM OF SALLIE  
MAE, INC, CLAIM NUMBER 10  
4-8-14 [[40](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 10, filed on March 27, 2014, by Sallie Mae, Inc. in the amount of \$5815.06 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was September 25, 2013, and to file a government claim was November 27, 2013. The Claim was filed on March 27, 2014.

The court will issue a minute order.

9. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR  
DAO-6

MOTION TO AVOID LIEN OF PAYMENT  
SOLUTIONS  
5-13-14 [[78](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) [subject to the provisions of 11 U.S.C. § 349]. The judicial lien in favor of Payment Solutions, recorded in the official records of Sacramento County, Book 20090528, Page 0621, is avoided as against the real property located at 10318 Chaves Court, Elk Grove, California.

The subject real property has a value of \$344,000.00 as of the date of the petition. The unavoidable liens total \$415,000.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

10. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR  
DAO-7

MOTION TO VALUE COLLATERAL OF  
BMW FINANCIAL SERVICES, N.A.,  
LLC  
5-13-14 [[83](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$17,900.00 of BMW Financial Services, NA, LLC's claim in this case secured by a 2008 BMW 535is ("Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$17,900.00 on the date of the petition.

The court will issue a minute order.

11. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR  
DAO-8

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA, INC.  
5-13-14 [[87](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$8,300.00 of Santander Consumer USA, Inc.'s claim in this case secured by a 2008 Toyota Tacoma ("Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$8300.00 on the date of the petition.

The court will issue a minute order.

12. [14-24030](#)-B-13 BRANDON CLOGSTON  
MET-1

MOTION TO VALUE COLLATERAL OF  
SOUTHERN CALIFORNIA POSTAL  
CREDIT UNION  
5-4-14 [[14](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is continued to June 24, 2014, at 9:32 a.m., to be heard after the hearing on Southern California Postal Credit Union's objection to confirmation of the debtor's chapter 13 plan.

The court will issue a minute order.

13. [11-25431](#)-B-13 TIFFANY PEREZ  
PLC-2

MOTION TO VALUE COLLATERAL OF  
U.S. BANK, N.A.  
4-16-14 [[27](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of U.S. Bank, N.A., As Trustee for the Pooling and Servicing Agreement Dated as of November 1, 2006 Master Asset-Backed Securities Trust 2006-HE4 Mortgage Pass-Through Certificates, Series 2006 HE4's ("USB") claim in this case secured by the second deed of trust on real property located at 3521 Dayton Street, Sacramento, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$123,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by City National Bank with a balance of approximately \$378,000.00. Thus, the value of the

collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

14. [12-28631](#)-B-13 KEVIN/INEZ SCOTT MOTION TO MODIFY PLAN  
PLC-9 4-30-14 [[85](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed April 30, 2014 (Dkt. 90) is confirmed; provided that neither the confirmation nor the ratification of prior payments by the trustee will have no preclusive effect in connection with any objection that may be made to the trustee's final report and account.

The court will issue a minute order.

15. [14-23633](#)-B-13 LESLIE VAN SYCKEL OBJECTION TO CONFIRMATION OF  
TWP-1 PLAN BY ROBERT FINK AND  
ASSOCIATES, LLC  
5-15-14 [[18](#)]

**Tentative Ruling:** This objection to confirmation was improperly filed under LBR 9014-1(f)(1). Objections to confirmation of an initial chapter 13 plan must utilize the court's procedures under LBR 9014-1(f)(2), which does not require written opposition. LBR 3015-1(c)(4). In this instance, the court will treat the objection is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues the following tentative ruling on the merits of the objection.

The creditor's objections are sustained. Confirmation of the initial plan filed April 9, 2014, is denied.

The court will issue a minute order.

16. [11-30437](#)-B-13 JEFF STRANGER MOTION TO MODIFY PLAN  
EJS-9 5-2-14 [[174](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed May 2, 2014, is confirmed.

The court will issue a minute order.

17. [14-21240](#)-B-13 DIANE OHARA  
PGM-2

MOTION TO AVOID LIEN OF LVNV  
FUNDING, LLC  
5-6-14 [[29](#)]

**Tentative Ruling:** The motion is granted. Pursuant to 11 U.S.C. § 506(a), \$450.00 of LVNV Funding, LLC's claim in this case secured by a personal computer and a television (collectively, the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$450.00 on the date of the petition.

Despite the title of the motion as a motion to avoid lien pursuant to 11 U.S.C. § 522(f), the court construes the motion as one to value collateral pursuant to 11 U.S.C. § 506(a), given the reference to § 506(a) in the memorandum of points and authorities filed in support (Dkt. 33), and the assertion in the motion (Dkt. 29) that the debtor seeks to value the Collateral.

The court will issue a minute order.

18. [14-23540](#)-B-13 LISA ILAGA  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
5-20-14 [[22](#)]

WITHDRAWN BY M.P.

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The objection is removed from the calendar. The chapter 13 trustee withdrew the objection on May 27, 2014 (Dkt. 34).

19. [11-33441](#)-B-13 DERRICK GREEN  
CA-2

MOTION TO MODIFY PLAN  
4-21-14 [[70](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained in part and overruled in part. The motion to confirm the modified plan filed April 21, 2014 is denied.

The chapter 13 trustee's objections regarding the debtor's default in plan payments and the lack of clarity in the plan's payment provisions are sustained for the reasons set forth therein.

The chapter 13 trustee's objection regarding the debtor's failure to file a statement of his current income and expenses on Forms 6I and 6J was resolved by the debtor's filing of an amended Schedule I and J utilizing the mandatory forms on June 3, 2014 (Dkt. 78).

The court will issue a minute order.

20. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS MOTION TO CONFIRM PLAN  
CAH-5 4-15-14 [[69](#)]

**Tentative Ruling:** The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed April 15, 2014, is denied.

The court will issue a minute order.

21. [13-35642](#)-B-13 LARRY/COLLEEN EDWARDS COUNTER MOTION TO DISMISS CASE  
CAH-5 5-27-14 [[76](#)]

**Tentative Ruling:** The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before June 24, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

22. [14-22545](#)-B-13 BRIAN GOLDHAMMER MOTION TO CONFIRM PLAN  
SJS-1 4-24-14 [[27](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed April 24, 2014, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

23. [14-22446](#)-B-13 LESLIE SMITH  
SJS-2

OBJECTION TO CLAIM OF INTERNAL  
REVENUE SERVICE, CLAIM NUMBER 3  
5-13-14 [[35](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The objection is dismissed without prejudice.

The objection is moot. The claimant Internal Revenue Service (the "Service") amended the claim to which the debtor objects on May 27, 2014. The amended claim supersedes the claim to which the debtor objects.

The debtor also did not give sufficient notice of the objection. The debtor's notice of hearing (Dkt. 36) states that written opposition to the objection is required. Objections to claims to which written opposition is required are governed by the notice requirements of LBR 3007-1(b)(1), which requires such objections to be filed and served 44 days before the date of the hearing. In this case the objection was filed and served 28 days before the date of the hearing.

The court will issue a minute order.

24. [14-24646](#)-B-13 OLGA SOLDATENKOV  
MS-1

MOTION TO VALUE COLLATERAL OF  
GM FINANCIAL  
5-1-14 [[8](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$12,450.00 of GM Financial's claim in this case secured by a 2010 Ford Fusion SE ("Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$12,450.00 on the date of the petition.

The court will issue a minute order.

25. [14-23347](#)-B-13 AARON/THERESA PELICAN  
DL-1

OBJECTION TO CONFIRMATION OF  
PLAN BY SACRAMENTO MUNICIPAL  
UTILITY DISTRICT  
5-21-14 [[25](#)]

**Tentative Ruling:** The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following

abbreviated tentative ruling.

The creditor's objections are sustained. Confirmation of the initial plan filed April 14, 2014, is denied.

The court will issue a minute order.

26. [14-23347](#)-B-13 AARON/THERESA PELICAN AMENDED OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN BY TRUSTEE  
JAN P. JOHNSON ., AMENDED  
MOTION TO DISMISS CASE  
5-22-14 [[31](#)]

**Tentative Ruling:** The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the initial plan filed April 14, 2014, is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 24, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

27. [11-26648](#)-B-13 CHRISTOPHER MCKENNEY MOTION TO INCUR DEBT  
PGM-2 5-13-14 [[46](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is dismissed without prejudice.

The motion was not properly served. The motion is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is refinancing the loan. The court also requires that the debtor give notice of the motion to all other creditors. In this case,

the debtor served the chapter 13 trustee, the UST and gave notice of the motion to all other creditors. The debtor did not, however, serve the motion consistent with the provisions of Bankruptcy Rule 7004 on the creditor extending the loan, First California Mortgage Company ("First California").

The motion is also not ripe for adjudication. The debtor seeks authorization to incur debt from First California for the purpose of purchasing real property. However, the debtor has not shown that if the motion is granted that he will actually obtain a loan. The debtor has filed copies of his loan application documents and a lock-in agreement (the "Lock-In Agreement") in support of the motion, but the copy of the Lock-In Agreement is not signed by a representative of First California. In addition, the Lock-In Agreement expired by its own terms on May 15, 2014, 26 days before the date of the hearing on this motion. As a result, the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no evidence of a finalized, pending loan agreement to which all necessary parties consent, no case or controversy within the meaning of Article III exists.

First California's intention to make a loan to the debtor may be manifested in ways other than executing the Lock-In Agreement. First California may file a response to the motion stating its agreement and intention, or it may appear at the hearing on the motion and state its agreement and intention on the record. Absent such evidence, the motion is dismissed without prejudice.

The court will issue a minute order.

28. [13-28451](#)-B-13 DOUGLAS SCOTT  
RPH-3

CONTINUED MOTION TO CONFIRM  
PLAN  
3-18-14 [[97](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to July 8, 2014, at 9:32 a.m., to be heard after disposition of Debtor's Motion to Approve Loan Modification with Golden 1 Credit Union.

29. [13-30052](#)-B-13 KEVIN BRACY  
BLG-3

MOTION TO MODIFY PLAN  
4-29-14 [[63](#)]

**Tentative Ruling:** Creditor Community Trust Credit Union ("CTCU")'s objection that the debtor has failed to satisfy the requirements of 11 U.S.C. § 1325(a)(3) is overruled. CTCU's request that the case be dismissed is denied. The motion is granted, and the first modified plan

filed April 29, 2014 (Dkt. 70) (the "Plan") is confirmed.

The Plan proposes to move CTCU's claim, which is secured by a 2007 BMW 750i (the "Collateral"), to Class 3. CTCU alleges in its opposition that the debtor is not currently in possession of the Collateral and is not cooperating with CTCU in locating the Collateral (Dkt. 74, p.2, line 28). CTCU contends that the debtor's alleged lack of possession and lack of cooperation means that Plan was filed in bad faith.

In a chapter 13 case in which the debtors sought to partially satisfy the secured claim of the Internal Revenue Service (the "Service") by surrendering to the Service personal property that the Service was barred from levying upon by the Internal Revenue Code, the Fourth Circuit Court of Appeals in In re White, 487 F.3d 199 (4th Cir. 2007) stated:

Although "surrender" is not defined in the Bankruptcy Code, see generally 11 U.S.C.A. § 101 (West 2004 & Supp.2006), the word's general meaning is not a mystery. The operative phrase in § 1325(a)(5)(C), "surrenders the property securing such claim to such holder," makes it clear enough that the "surrender" spoken of entails the secured creditor ultimately holding all rights, including the right of possession, in the property securing the claim. Thus, one prominent bankruptcy treatise has defined "surrender" in the § 1325(a) context as the "relinquishment of any rights in the collateral," including the right to possess the collateral. 8 Collier on Bankruptcy ¶ 1325.06[4] (Alan N. Resnick & Henry J. Sommer eds., 15th ed.2005). This definition has been formulated by a number of bankruptcy courts called on to construe § 1325(a)(5)(C). See, e.g., Hosp. Auth. Credit Union v. Smith (In re Smith), 207 B.R. 26, 30 (Bankr.N.D.Ga.1997) (concluding that § 1325(a)(5)(C) makes plain that "a debtor must at least tender possession or control of the collateral to the creditor"); In re Stone, 166 B.R. 621, 623 (Bankr.S.D.Tex.1993) (holding that "the term 'surrender' [under § 1325(a)(5)(C)] was contemplated by Congress to be a return of property and a relinquishing of possession or control to the holder of the claim"). Other legal and non-legal definitions of "surrender" also focus on the complete relinquishment of rights, see Black's Law Dictionary 1484 (8th ed.2005) (defining "surrender" as "yielding to another's power or control" and "giving up of a right or claim"), Merriam-Webster's Collegiate Dictionary 1258 (11th ed.2003) (defining "surrender" as "the action of yielding one's person or giving up the possession of something esp. into the power of another"), including relinquishment of the right to possession, see, e.g., Black's Law Dictionary 1484-85 (defining "surrender" in the landlord-tenant context as the tenant's "relinquishment of possession before the lease has expired"), U.C.C. § 3-604(a) (2002) (stating that one way for an instrument-holder to discharge the obligation of a party to the instrument is "surrender," i.e., physical delivery or turn over, of the instrument to the obligated party). At the most basic level, then, the word "surrender" means the relinquishment of all rights in property, including the possessory right, even if such relinquishment does not always require immediate physical delivery of the property to another.

In re White, 487 F.3d 199 (4th Cir. 2007).

Class 3 (surrender) treatment does not require the debtor to deliver possession of the Collateral to CTCU. It only requires the debtor to

relinquish any rights in the Collateral, including the right to possess the Collateral, as of the time of confirmation. The Plan meets the definition of surrender.

CTCU received relief from the automatic stay with respect to the Collateral on November 5, 2013 (Dkt. 52). CTCU cites no authority for the proposition that the debtor's failure to retrieve the Collateral and deliver it to CTCU means that the Plan was filed in bad faith.

CTCU's request that the case be dismissed is denied because CTCU has failed to cite or analyze any authority in support of such a request. LBR 9014-1(d)(5).

The court will issue a minute order.

30. [14-22553](#)-B-13 JEFFREY HAMILTON  
FHS-1

MOTION TO VALUE COLLATERAL OF  
ROCKY GENTNER AND DEBORAH  
GENTNER  
5-13-14 [[24](#)]

**Tentative Ruling:** The motion is continued to a final evidentiary hearing on August 4, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. At the evidentiary hearing, evidence will be taken only as to the value of the real property located at 514 Hamilton Way, Oroville, Butte County, CA (APN 027-360-110-000).

On or before July 28, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondents' binder tabs shall be consecutively lettered, commencing at letter A. On or before July 28, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value Collateral of Rocky and Deborah Gentner. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [[www.tabbies.com](http://www.tabbies.com)] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

31. [14-22553](#)-B-13 JEFFREY HAMILTON  
HLC-1

OBJECTION TO CONFIRMATION OF  
PLAN BY ROCKY GENTNER AND  
DEBORAH GENTNER  
5-15-14 [[30](#)]

**Tentative Ruling:** This matter is continued to August 5, 2014, at 9:32 a.m.

32. [14-24256](#)-B-13 RICKY/DONNA CUEVAS  
SJS-1

MOTION TO VALUE COLLATERAL OF  
CITIMORTGAGE  
5-9-14 [[16](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of CitiMortgage, Inc.'s claim secured by the second deed of trust on real property located at 8634 Hampton Hill Court, Sacramento, CA 95828 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$262,702.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Seterus, Inc. with a balance of approximately \$364,189.00. Thus, the value of the collateral available to CitiMortgage, Inc. on its second deed of trust is \$0.00.

The court will issue a minute order.

33. [14-21064](#)-B-13 IVAN BRENT  
IKB-1

MOTION TO CONFIRM PLAN  
4-22-14 [[31](#)]

**Tentative Ruling:** The motion to confirm the plan filed March 4, 2014 (Dkt. 17) is dismissed without prejudice.

The motion is dismissed without prejudice because the debtor has failed to provide evidence that the motion, notice of hearing (Dkt. 32), and supporting declaration (Dkt. 33) were served on all creditors as is required by Federal Rule of Bankruptcy Procedure 2002(b). The docket reflects that no proof of service of these documents has been filed by the debtor in derogation of Local Bankruptcy Rule 9014-1(e). Although the court recognizes that the proposed chapter 13 plan was served on April 22, 2014 (Dkt. 34), there is no evidence that all creditors were provided notice of today's confirmation hearing. As the court instructed in its order conditionally denying the trustee's motion to dismiss entered on April 17, 2014 (Dkt. 27), the debtor was to file, set for hearing, and serve a motion to confirm plan by April 22, 2014. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

34. [14-23465](#)-B-13 JENNIFER SPENCER  
FF-1

MOTION TO VALUE COLLATERAL OF  
HSBC MORTGAGE SERVICES  
5-1-14 [[16](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of HSBC Mortgage Services' claim secured by the second deed of trust on real property located at 3409 Barrington Road, Sacramento, CA 95864 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$95,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by FCI Lender Services, Inc. with a balance of approximately \$195,206.00. Thus, the value of the collateral available to HSBC Mortgage Services on its second deed of trust is \$0.00.

The court will issue a minute order.

35. [14-23465](#)-B-13 JENNIFER SPENCER  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
5-7-14 [[21](#)]

**Tentative Ruling:** The trustee's objections are overruled. The motion to dismiss is denied. The plan filed April 3, 2014 (Dkt. 5) will be confirmed with the following modification in the order confirming the plan: Section 2.07 shall state that the monthly payment for administrative expenses shall be \$50.00.

The trustee's first objection that the terms for payment of the debtor's attorney's fees are unclear is overruled because it is resolved by the aforementioned modifying language in the order confirming the plan.

The trustee's second objection that the plan's feasibility depends on the granting of a motion to value collateral of HSBC Mortgage Services is overruled because that matter was heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment of that claim.

The court will issue a minute order overruling the trustee's objections and denying the motion to dismiss. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the plan.

36. [12-42172](#)-B-13 DAVID/ROSA MARTINEZ  
JPJ-1

OBJECTION TO CLAIM OF OCWEN  
LOAN SERVICING, LLC, CLAIM  
NUMBER 10  
4-8-14 [[30](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 10, filed on January 16, 2014, by Ocwen Loan Servicing, LLC in the amount of \$345,216.06 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was May 8, 2013. The Claim was filed on January 16, 2014.

The court will issue a minute order.

37. [10-51977](#)-B-13 MARK/JULIA WHELAN  
SAC-1

MOTION FOR SUBSTITUTE AFTER  
DEATH AND/OR MOTION TO DISMISS  
MARK WHELAN  
5-12-14 [[42](#)]

**Tentative Ruling:** This motion is unopposed. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, joint debtor Julia Alicia Whelan is authorized to perform the obligations and duties of deceased debtor Mark Michael Whelan in this case, in addition to performing her own obligations and duties. Except as so ordered, the motion is denied.

Pursuant to Federal Rule of Bankruptcy Procedure 1016, administration of case no. 10-51977-B-13 shall proceed and be concluded in the same manner, so far as possible, as though the death of debtor Mark Michael Whelan had not occurred. Federal Rule of Bankruptcy Procedure 7025 is applicable only in adversary proceedings and contested matters.

The court will issue a minute order.

38. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
JPJ-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
5-7-14 [[26](#)]

**Tentative Ruling:** The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). This matter is continued from May 27, 2014, to be heard after disposition of motions to value collateral of CitiFinancial, Inc. and GMAC Mortgage, LLC. As the motion

remains in a preliminary procedural posture, opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's first two objections that feasibility of the plan depends on the granting of motions to value collateral of Specialized Loan Servicing and CitiFinancial, Inc. are overruled. The trustee's objection that the plan fails to comply with 11 U.S.C. § 1325(a)(4) is overruled. The trustee's objection under 11 U.S.C. § 521(a)(3) is sustained. Confirmation of the plan filed April 1, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 24, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's first two objections are overruled because both motions to value collateral were heard elsewhere on today's calendar and resolved in a manner consistent with the plan's proposed treatment of those claims.

The trustee's objection under 11 U.S.C. § 1325(a)(4) is overruled because the court is unclear as to how the trustee calculated the amount of non-exempt property in the estate. According to the trustee, his review of the debtor's Schedules A, B, and C reveals a total of \$7,721.00 in non-exempt property in the estate, and the plan fails the liquidation analysis test of 11 U.S.C. § 1325(a)(4) because the total amount to be paid to unsecured creditors is only \$3,987.79. However, the court's review of Schedules A (Dkt. 1, p.16), B (Dkt. 25, p.4), and C (Dkt. 25, p.7) reveals no non-exempt property in the estate. Furthermore, the plan provides for a 0.00% dividend to be paid on approximately \$87,456.35 in unsecured claims. The trustee has failed to adequately explain how he has calculated his figures. Accordingly, the objection is overruled.

The trustee's objection under 11 U.S.C. § 521(a)(3) is sustained. Here, the trustee alleges that Schedule J (Dkt. 1, p.34) double-lists expenses for taxes and insurance payments on a property owned by the debtor and located in Washington. The trustee requested that the debtor file an amended Schedule J to correct this discrepancy. To date, the debtor has failed to file an amended Schedule J. Accordingly, this objection is sustained.

The court will issue a minute order.

39. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
JPJ-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
5-8-14 [[29](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The objection is removed from the calendar. The trustee withdrew the objection on May 28, 2014 (Dkt. 37).

40. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
PGM-1

MOTION TO VALUE COLLATERAL OF  
GMAC MORTGAGE, LLC  
5-2-14 [[19](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of GMAC Mortgage, LLC's claim secured by the second deed of trust on real property located at 6814 87<sup>th</sup> Street NW, Gig Harbor, WA 98332 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$65,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by CitiFinancial, Inc. with a balance of approximately \$86,813.71. Thus, the value of the collateral available to GMAC Mortgage, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

41. [14-23378](#)-B-13 CHRISTINE KELLERMANN  
PGM-2

MOTION TO VALUE COLLATERAL OF  
CITIFINANCIAL, INC.  
5-2-14 [[14](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of CitiFinancial, Inc.'s claim secured by the third deed of trust on real property located at 6814 87<sup>th</sup> Street NW, Gig Harbor, WA 98332 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$65,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by CitiFinancial, Inc. with a balance of approximately \$86,813.71 and a second deed of trust held by GMAC Mortgage, LLC with a balance of approximately \$65,239.62. Thus, the value of the collateral available to CitiFinancial, Inc. on its third deed of trust is \$0.00.

The court will issue a minute order.

42. [11-21980](#)-B-13 GARY/JANICE HANSEN  
SS-3

MOTION TO WAIVE REQUIREMENT FOR  
DEBTOR GARY HANSEN TO FILE  
CERTIFICATION UNDER 11 U.S.C.  
1328 AND CERTIFICATE RE: 11  
U.S.C. 522(Q)  
5-19-14 [[41](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

43. [13-31580](#)-B-13 TIAJUANNA TOLES  
PGM-1

MOTION TO MODIFY PLAN  
4-25-14 [[19](#)]

**Tentative Ruling:** The trustee's opposition is sustained. The motion to confirm the modified plan filed April 25, 2014 (Dkt. 23) is denied.

The court will issue a minute order.

44. [13-35281](#)-B-13 DAMIAN AVALOS  
JPJ-2

MOTION TO RECONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
5-7-14 [[77](#)]

**Tentative Ruling:** The debtor's opposition is overruled. The trustee's motion is granted, and the case is reconverted to one under chapter 7 pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

11 U.S.C. § 1307(c) enumerates eleven non-exclusive grounds which may constitute "cause" for conversion or dismissal of a chapter 13 case. § 1307(c) establishes a two-step analysis for dealing with questions of conversion and dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" In re Nelson, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) The bankruptcy court is given discretion to convert or dismiss based on unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). A debtor's "unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for (conversion or) dismissal under § 1307(c)(1)." In re Ellsworth, 455 B.R. 904, 915 (B.A.P. 9<sup>th</sup> Cir. 2011). In determining "cause" under § 1307(c), the court may analyze the entire record. In re de la Salle, 461 B.R. 593, 605 (B.A.P. 9<sup>th</sup> Cir. 2011).

Here, the trustee seeks dismissal or reconversion of the case to one under chapter 7, alleging that the debtor failed to appear at the duly noticed first meeting of creditors held April 3, 2014, as well as the

continued meeting of creditors held April 24, 2014. The trustee further alleges that the debtor has failed to make any plan payments since the case was originally converted to chapter 13 on February 25, 2014 (Dkt. 52), and has provided no explanation as to why he has proposed an amended chapter 13 plan (Dkt. 85) which provides for \$0.00 in payments for the first two months of the plan.

The court finds that the trustee has established "cause" to dismiss or reconvert this case pursuant to 11 U.S.C. §§ 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failure to commence making timely payments as required by 11 U.S.C. § 1326(a). In this instance, the court reconverts the case to one under chapter 7 based on the trustee's assertions and the Notice of Assets filed by the chapter 7 trustee on January 8, 2014.

The court finds the debtor's opposition (Dkt. 90) unpersuasive for the reasons stated in the trustee's reply brief (Dkt. 92).

The court will issue a minute order.

45. [14-22283](#)-B-13 MARIE WILLIAMS  
JMC-2

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
5-12-14 [[45](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$25,375.00 of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services' claim secured by a 2011 Crew Dodge Durango (VIN 1D4SD4FT2BC696871) (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$25,375.00 on the date of the petition.

The court will issue a minute order.

46. [14-23684](#)-B-13 FLORENCE LADI  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-20-14 [[17](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The objection and motion to dismiss are removed from the calendar. The trustee withdrew the objection and motion to dismiss on June 4, 2014 (Dkt. 23).

47. [14-23388](#)-B-13 DEBRA HILTON  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-20-14 [[20](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The objection and motion to dismiss are removed from the calendar. The trustee withdrew the objection and motion to dismiss on May 28, 2014 (Dkt. 23).

48. [11-29591](#)-B-13 BRIAN SAECHAO  
PLC-2

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH FEDERAL NATIONAL  
MORTGAGE ASSOCIATION AND  
SETERUS, INC.  
5-19-14 [[34](#)]

**Tentative Ruling:** The motion is denied without prejudice.

The motion is denied without prejudice because it was not properly noticed to all parties-in-interest. Pursuant to Local Bankruptcy Rule 9014-1(f)(2), "when fewer than twenty-eight (28) days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs." LBR 9014-1(f)(2)(C). Here, the motion was filed on May 19, 2014, or twenty-two (22) days prior to today's hearing date. However, the notice of hearing (Dkt. 35) instructs parties that written opposition to the motion was due at least fourteen (14) days prior to the hearing date. This would have given interested parties no more than eight (8) days' notice to file an opposition to this motion (likely less given service time via U.S. Mail). Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

49. [13-36091](#)-B-7 JAMES/MOLLY ALEXANDER  
LBG-1  
CASE CONVERTED TO CH. 7 ON  
5/1/14

MOTION TO CONFIRM PLAN  
4-21-14 [[31](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. The bankruptcy case was converted to one under chapter 7 on May 1, 2014 (Dkt. 40).

The court will issue a minute order.

50. [13-29992](#)-B-13 JUAN COLEMAN  
SNM-3

MOTION TO MODIFY PLAN  
4-23-14 [[54](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The debtor withdrew the motion on June 3, 2014 (Dkt. 64).

51. [12-39396](#)-B-13 CASWELL/DOROTHY JOHNSON  
PGM-5

OBJECTION TO CLAIM OF LAW  
OFFICES OF KENOSIAN AND MIELE,  
CLAIM NUMBER 3  
4-17-14 [[99](#)]

**Tentative Ruling:** The objection is overruled without prejudice.

The debtors question the validity of claim no. 3, filed by the Law Offices of Kenosian and Miele (the "Creditor") on November 15, 2012, in the secured amount of \$25,168.03 (the "Claim") on the grounds that the Creditor has failed to attach to the Claim evidence substantiating it. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the Claim is based on a judgment lien on real property. The debtors allege that the Creditor failed to include with the Claim proof of recordation of the abstract of judgment substantiating the Claim. Federal Rule of Bankruptcy Procedure 3001(d) provides that "if a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected." Fed. R. Bankr. P. 3001(d). A "security interest" is a "lien created by an agreement." 11 U.S.C. § 101(51). A lien created by the recording of an abstract of judgment is a judgment lien, not a security interest, because it is not created by an agreement between the parties. Therefore, a judgment lien is not covered by the provisions of Federal Rule of Bankruptcy Procedure 3001(d). The Claim has prima facie validity pursuant to Federal Rule of Bankruptcy Procedure 3001(f). The objection is overruled without prejudice because the debtors have provided no evidence to rebut the prima facie validity of the Claim. Simply calling into question the validity of the Claim by stating what they believe is missing from the Claim, without more, is insufficient to overcome the prima facie validity of the Claim.

The court will issue a minute order.

52. [14-23598](#)-B-13 STEPHANIE POE  
JPJ-1

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-20-14 [[22](#)]

**Tentative Ruling:** None.

53. [14-23598](#)-B-13 STEPHANIE POE  
MAC-1

MOTION TO VALUE COLLATERAL OF  
GREEN TREE SERVICING AND OCWEN  
MORTGAGE SERVICING, INC.  
5-15-14 [[18](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.